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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/443,251	11/17/1999	ALGY TAMOSHUNAS	PHN-15.446R	6951

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EXAMINER

GRANT II, JEROME

ART UNIT PAPER NUMBER

2626

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/443,251

Applicant(s)

SCHLATMANN

Examiner

Jerome Grant II

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

JEROME GRANT II
PRIMARY EXAMINER

Detailed Action

Cross-Referencing

1. There is no cross-reference in the specification regarding the instant Reissue application being a Reissue of U.S. Patent No. 5,764,313.

Certificate of Correction

2. Before, Allowance, a Certificate of Correction is necessary to make reference of 09/443,251 in the U.S. Patent 5,764,313.

Surrender of Original Patent

3. Applicant is required to surrender the original patent as required by 35 U.S.C. 251 (or) submit an affidavit/declaration averring that the original patent is lost or misplaced.

37 CFR 1.178. Original patent; continuing duty of applicant.

(a) The application for a reissue should be accompanied by either an offer to surrender the original patent, or the original patent itself, or if the original is lost or inaccessible, by a statement to that effect. The application may be accepted for examination in the absence of the original patent or the statement, but one or the other must be supplied before the application is allowed. If a reissue application is refused, the original patent, if surrendered, will be returned to applicant upon request.

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The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

New Matter

4. Applicant is advised that new matter, that is, matter not present in the patent sought for Reissue, is excluded from a Reissue application in accordance with 35 U.S.C. 251.

35 U.S.C. 251. (Reissue of defective patents.)

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the un-expired part of the term of the original patent. **No new matter shall be introduced into the application for reissue.**

5. Claims 6-10 are rejected under 35 U.S.C. Sect. 251 for introducing and containing new matter in the Reissue application.

The new matter includes "A monitor provided with a cabinet..."

The Background of the Invention states:

"The invention relates to a TV receiver set provided with a cabinet, a picture tube, and fastening means for fastening the picture tube in the cabinet, a fastening hook of the picture tube, and a bracket which is fastened between the support and the hook."

There is clearly no mention of a "monitor provided with a cabinet".

Moreover, the Field of the Invention states:

"Such a TV receiver set is known from GB-A-1,122,178. Clearly, the field of the invention was directed toward a TV receiver and not a monitor. There is no mention in the Field of the Invention of a monitor.

The specification is deficient with respect to a monitor. The specification does not anticipate or suggest the use of the invention with a monitor.

The original claims also do not suggest the use of the invention with a monitor.

It is well known that some monitors today do not use CRTs, i.e., liquid crystal display monitors don't use a CRT. Hence, applicant does not have enabling disclosure for the invention to be directed to both a CRT and computer monitor.

Defective Reissue Declaration

6. Claims 6-10 are rejected as being based upon a defective Reissue Declaration under 35 U.S.C. Sect. 251 as set forth below. See 37 C.F.R. 1.175.

The nature of the defect is as follows: The specification of the original patent is directed toward a CRT in a television receiver. Applicant alleges that an error was made in that the claims should also be directed to a computer monitor. First, there is no error, in that the original claims were correctly directed toward a television receiver since that is all that the specification was directed toward. The applicant now, erroneously directs the claims in the Reissue application to subject matter not covered in the original specification. Second, even if applicant did have original support for a computer monitor, a computer monitor is not claimed in the Reissue claims.

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Double Patenting

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 6-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 5,764,313. Although the conflicting claims are not identical, they are not patentably distinct from each other for the reason set forth below. The original claims are directed toward mounting a CRT in a television receiver cabinet. By applicant's own admission in the Declaration of the Reissue, he states in part:

"... since a computer monitor is, in essence, a television receiver..",

applicant insinuates the two devices are the same.

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Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerome Grant II whose telephone number is 703-305-4391. The examiner can normally be reached on Jerome Grant II from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kimberly A. Williams, can be reached on (703) 305-4391. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.


JEROME GRANT II
PRIMARY EXAMINER

J. Grant II